PEOPLE FOR THE AMERICAN WAY
Defending Constitutional Liberties

STATE & LOCAL ANTI-GAY INITIATIVES & LEGISLATION REPORT

OCTOBER-NOVEMBER 1996

This is not a comprehensive report of all the anti-gay bills introduced or laws passed around the country, but rather a sample of the range of anti-gay activities taking place and a source of selected information and contacts. To learn more about anti-gay activity covered in this report or to inform us of other local or state anti-gay activity, please contact Sonya Schwartz at (202) 467-2338 or at sschwartz@pfaw.org. ***This report is also available via electronic mail. To find out more about People For the American Way, visit our website at http://www.pfaw.org.***

Anti-gay activity continues around the nation at the federal, state and local levels. Anti-gay provisions were included in several bills at the end of the 104th Congress. States have continued to push ahead with bills prohibiting same sex marriages, and a variety of anti-gay legislative efforts have been pushed at the local level. Meanwhile, gay rights' supporters are still weighing the election's effect on anti-gay activity.

- House Resolution 3610, the Omnibus Appropriations Bill for 1997, included a provision that would ban federal grants and contracts to schools that oppose Reserve Officers Training Corps (ROTC) or military recruiters. Schools have typically been opposed to ROTC and military recruitment because of the government's "don't ask, don't tell" policy on gays in the military. A Pentagon official said that the Defense Department currently considers seven schools to be anti-ROTC and 17 more to be against recruitment. The House and Senate both passed H.R.3610 and it was sent to the President for signature. It became Public Law 104-208.
- Representative Lamar Smith (R-TX) introduced H.R. 2202, which sought to limit spending on the welfare of immigrants, including health care spending that would affect immigrants with HIV and AIDS. While the bill would have allowed for both testing and treatment of other diseases, it would have only allowed testing for HIV. Immigrants with AIDS would also have suffered from a provision that would deport anyone without full citizenship status who accepted more than one year of public benefits based on need. The bill would have also made it more difficult for gay men and lesbians -- who have become recognized, under the Clinton administration, as an oppressed group subject to persecution -- seeking political asylum to enter the United States. House Resolution 2202 passed the U.S. House of Representatives at the end of the 104th Congress. The Senate did not vote on the bill.
- The 1997 National Defense Authorization bill, H.R. 3230, was amended in the House of Representatives to include language that would ban gay men and lesbians from serving in the United States Armed Forces and would forcibly discharge HIV+ members of the service. The Senate version contained no such language. While the legislation was in conference committee, these provisions were removed from the bill. The conference report passed both houses, without the anti-gay language, and was signed into law on September 23, 1996.
- On October 21, the Supreme Court declined to hear *Thomasson v. Perry,* the first constitutional challenge to the "don't ask, don't tell" policy on gays in the military. The action left standing the decision of a federal court that refused to reverse the discharge of a Navy Pilot after he

2000 M Street NW
Suite 400
Washington DC 20036

202 467 4999
202 293 2672 / Fax

that he was gay. The Supreme Court's action set no precedent at the Supreme Court level and does not prevent the justices from hearing a different challenge to the policy in the future, and other cases are working their way through the federal courts.

- The Supreme Court refused to reinstate a $125,000 invasion of privacy award in *Doe vs. Southeastern Pennsylvania Transportation Authority*. The award was won in federal court and then lost in the 3rd U.S. Circuit Court of Appeals by a former Pennsylvania worker whose HIV-positive status was disclosed to fellow employees. The chief administrative officer of his office sought employee drug records from a pharmacy to monitor evidence of fraud or drug abuse. The man's name was listed along with a prescription drug used to treat AIDS. The administrative officer and another agency official reviewed the report, and showed it to the man's direct supervisor. The AIDS-related drugs had been highlighted. The appeals court ruled that the agency's need to monitor its drug plan outweighed the employee's privacy interest.
- Hawaii residents voted by a narrow margin to convene a state constitutional convention in which they could discuss passage of a state constitutional amendment to outlaw same sex marriage in Hawaii. *Baehr v. Miike*, Hawaii's historic same sex marriage case, went to trial on September 10, closing arguments were heard on September 20, amicus briefs have been filed, and a decision is expected in December or January. In order for the state to prevail, and same sex marriage to be outlawed, Hawaii will have to show a "compelling state interest" for discrimination against same sex couples. If the state should fail to meet this burden of proof, Hawaii may see a final court ruling, recognizing same sex couples' right to marry, by 1997.
- In anticipation of the ruling on *Baehr v. Miike*, bills have been introduced in 36 states to prohibit same sex marriages, or the recognition of such marriages performed in other states. Seventeen of those bills have died, but 17 states have now passed such laws this year. **Alaska, Arizona, Delaware, Georgia, Idaho, Illinois, Kansas, Michigan, Missouri, North Carolina, Oklahoma**, Pennsylvania, **South Carolina, South Dakota** and **Tennessee** have joined **Utah**, which enacted its law last year. A bill is pending in **New Jersey.** The governors of **Alabama** and **Mississippi** have signed executive orders, and ballot initiative petitions are circulating in **Maine** and **Oregon**.

Hostile Climate 1995, People For the American Way's 124-page annual report documenting 180 anti-gay incidents nationwide, is available from our Washington office for $10.95/copy for non-members and $9.95/copy for members (sorry, pre-paid mail orders only). The next edition of *Hostile Climate* is in preparation and will be released early in 1997. ***If you have anti-gay incidents to report, contact Sonya Schwartz at (202) 467-2338 or at sschwartz@pfaw.org.***

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CALIFORNIA

On September 3, 4, and 5, hearings were held around the state of California regarding a policy that would prohibit adoptions by unmarried couples. The Department of Social Services currently recommends against such adoptions; however, such a policy was never formally adopted, and judges throughout California granted thousands of adoptions by lesbian and gay couples, including mostly second-parent or "limited consent" adoptions. A spokesman for the Wilson administration commented that adoptions by gays, lesbians and single adults are "not in the best interests of society." Critics

claimed that he was primarily interested in blocking adoption by gay and lesbian couples. An agency spokesman argued that they wanted to preserve "the sanctity of marriage." The rule against adoptions by unmarried couples would go into effect in 1997 if approved by the state Health and Welfare Agency.-

Santa Clara

Opponents of a domestic partner registry recently approved by Santa Clara County Supervisors succeeded in collecting signatures to overturn the vote through referendum. On October 29, the county registrar of voters approved an estimated 50,734 signatures of the 59,462 signatures filed on September 18. If the county does not call a special election on the registry, the issue is likely to be placed on the next countywide ballot, scheduled for June 1998. The registry's opponents were funded by the Santa Clara County Taxpayers' Association, which is concerned that the registry will be the first step toward legal and financial benefits for domestic partners. A pastor from the South Hills Community Church of San Jose, an opponent of the registry, commented, "We really are determined not to do this with any hostility to the gay and lesbian community...We are just trying to protect marriage."

The registry would allow gay and unmarried heterosexual couples to declare their relationship; however, the registry awards none of the legal rights of marriage. Couples who live together could declare their partnership by paying a one-time fee of $26 to the county and agreeing to be jointly responsible for shared living expenses.

∇ Legislative contact: L.A. Gay and Lesbian Community Services Center, 1625 N. Schrader Blvd., Los Angeles, CA 90028; (213) 860-7358; Attn: Sky Johnson, Director of Public Policy & Communications.

COLORADO

Amendment 17 to the Colorado State Constitution, the Parental Rights Amendment, which would have given parents the right to "to direct and control the upbringing, education, values and discipline of their children" was defeated by voters on November 5. With the enormous financial and organizing support from Of The People (OTP), a Virginia-based conservative group with Religious Right ties, proponents managed to collect the required signatures to qualify for November's ballot. The initiative would have needlessly pitted parents against parents, as well as against teachers and other child care professionals, and would have led to an increase in costly litigation. It would have provided the means for individuals to block sexuality and AIDS education, discussion of gay and lesbian issues, and other curricula they found objectionable not simply for their own children, but for other parents' children as well.

GEORGIA

Atlanta

Only days after Mayor Bill Campbell signed a measure to grant health insurance and other benefits to domestic partners of city employees, opponents filed a lawsuit challenging it as financially irresponsible and inconsistent with the state's ban on same sex marriages. The ordinance was the second

attempt in the last three years to extend some benefits to the partners of city workers. A similar 1993 measure was never implemented and was overturned by the Georgia Supreme Court last year on the grounds that domestic partners can only be declared "a family" by the state legislature. The language of the new version is intended to preclude such challenges. A local lawyer argued, "This ordinance is clearly oriented toward homosexual unions, and the State of Georgia has recently gone on record that they are not interested in encouraging homosexual marriage." The ordinance would apply to both same sex and heterosexual partners. A spokesman for the mayor said, "If there was going to be an onslaught of new people seeking benefits, it would have happened by now. We think the fears of the fiscal impact are exaggerated, but more important, we think it is the right thing to do."

HAWAII

Hawaii residents voted by a narrow margin to convene a state constitutional convention in which they could possibly discuss passage of a state constitutional amendment to outlaw same sex marriage in Hawaii. The question, "Shall there be a convention to propose a revision of or amendments to the Constitution?" must appear on the ballot every 10 years in Hawaii. Delegates to the convention will not be appointed until the 1998 general election, unless a special election is called for this purpose. It is possible that the prospect of a constitutional convention will dissuade the Hawaii state legislature from taking up same sex marriage.

The trial in *Baehr v Miike*, a case in which gay and lesbian couples are seeking the right to legally marry, began on September 10, closing arguments were heard on September 20, amicus briefs have been filed, and a decision is expected in December or January. In order for the state to prevail, the state government must show a "compelling state interest" for not granting marriage licenses to same sex couples. If the court decides that the state failed to meet this burden, Hawaii is expected to see a final court ruling, upholding same sex couples' right to marry. The case arose from a 1993 Hawaii Supreme Court ruling that said that the state had to show a compelling interest in denying marriage licenses to gay couples, which the court called unconstitutional discrimination on the basis of sex. The case was sent back to a trial court to give the state a chance to make its case. Whatever the outcome, the case is expected to return to the state Supreme Court for a final ruling. To support the state's case, the legislature passed a law in 1994 defining marriage as solely between a man and a woman; it also appointed a commission to study the issue of same sex marriage. The commission issued a report last December, recommending by a 5-2 vote that same sex marriage be legalized. Thus, experts predict that the state will not be successful in its assertions of a compelling interest in denying such marriages.

∇ Legal contact: Lambda Legal Defense and Education Fund, 666 Broadway, 12th Floor, New York, NY 10012; (212) 995-8585; Attn: Evan Wolfson.

INDIANA

Lafayette

On November 4, the Lafayette City Council surprisingly voted not to repeal the sexual orientation provisions of the local civil rights ordinance. This was the second of two votes on these provisions. The repeal had passed by a vote of 5-4 on the initial reading, but was ultimately rejected by a vote of 6-2. The "sexual orientation" wording had been added in 1993.

A seventeen-year member of the city council in neighboring Bloomington had sent letters to the Lafayette City Council urging its members to reject the repeal amendment. People For the American Way Action Fund's president also sent a similar letter. The deputy legal director for the People For the American Way Action Fund, commented, "We're quite pleased the city council has done the right thing and sent the right message to all citizens that everyone in the community should be treated equally and fairly." A staff attorney for Lesbian Rights in San Francisco said, that the repeal would have sent "a very chilling message to lesbian and gay people that their civil rights -- the very basic rights to be able to seek work and hold a job -- [were] not secure."

MAINE

On November 12, Concerned Maine Families (CMF) announced that they had collected enough signatures to qualify a ballot referendum that would prohibit Maine from recognizing same sex marriages performed in other states. CMF has gathered 60,000 signatures, almost one-fifth more than the 51,000 signatures needed to qualify. If the signatures are approved, the initiative will appear on the November 1997 ballot. The Maine Lesbian and Gay Political Alliance mounted an unsuccessful "Decline to Sign" campaign against CMF's effort. Although the referendum is supposedly intended to "encourage the traditional monogamous family unit as the building block of our society, the foundation of harmonious and enriching family life," CMF's leader would also like to block the newly enacted domestic partner benefit policy at the University of Maine. CMF initiated this drive less than a year after Maine voters defeated the only anti-gay referendum to appear on a ballot in 1995.

MICHIGAN

Lansing

Both ballot measures to repeal Lansing's March 1996 civil rights ordinance -- which contained a ban on discrimination in housing, employment, and public accommodations on the basis of sexual orientation -- passed on November 5. While the measures had the same effect, they were written by different sources and used different language to convey their message. The city council wrote Proposal One in clear, concise language. Majority Opposing Special Treatment (MOST) crafted Proposal Two in ambiguous language apparently intended to confuse voters. Proposal One passed by a slimmer margin of 52% to 47%, and proposal Two passed by a vote of 55% to 44%.

A long battle was waged in Lansing over the issue of civil rights for gay men and lesbians. Public debate had raged for 18 months before the Lansing City Council passed the anti-discrimination

ordinance in March. Immediately thereafter, MOST began collecting signatures, and collected enough to put the measure to a referendum. However, the Lansing Equal Rights Task Force, with the help of Lambda Legal Defense and Education Fund, filed a lawsuit in Ingham County Circuit Court charging that the petitions violated the city charter because they did not state the ordinance in full and were accompanied by misinformation about it, and alleging that the Lansing City Clerk acted illegally when she certified the repeal measure for the referendum. MOST lost, and was given 30 days to recollect the signatures.

Saugatuck

A committee will reexamine an ordinance designed to protect the civil rights of gay men and lesbians, even though the city council terminated its discussion of such an ordinance months ago. Council member Peg Sanford reintroduced the issue by showing a summary of nearly 50 similar ordinances in effect in other communities. She said, "A human rights ordinance will not hurt this community, why not have [one] when we have residents who feel safer with one in place." The Saugatuck City council voted 6 to 1 in early September to reopen the issue of preserving human rights regardless of sexual orientation. The council will form a committee of 10 residents and three council members to discuss the issue.

∇ Legal contact: Lambda Legal Defense and Education Fund, 17 E. Monroe Street, Ste. 212, Chicago, IL 60603; (312) 759-8110; Attn: Patricia Logue.

PENNSYLVANIA

On October 16, Governor Tom Ridge signed a bill that would ban same-sex marriages in Pennsylvania. The bill was introduced as an amendment to Senate Bill 434, an unrelated piece of legislation that allowed grandparents to apply for custody of their grandchildren. The Senate voted 43-5 to pass it on October 1, and the House passed it on October 7, by a vote of 189-13. Representative Ron "Huck" Gamble (D-Allegheny), a conservative who is retiring at the end of the term, said he had never expected to vote on a bill defining marriage as between a man and a woman. He commented, "I just thank God I'm going back to Oakdale, where men are men and women are women, and believe me boys, there's one hell of a difference." Representative Lita I Cohen of Montgomery County, the only Republican to vote against the bill, believed the bill's message was one of "bigotry and hatred."

Elizabethtown

On September 17, the Elizabethtown School Board passed a resolution stating that the "pro-homosexual concepts on sex and family as promoted by the National Education Association [would] never be tolerated or accepted in this school." It passed in less than 20 minutes with no public input and no research by the board. The resolution was originally sent to a school board member with hand-written comments from Beverly LaHaye, president of Concerned Women of America. The resolution provoked self-censorship. The Elizabethtown High School band director decided not to allow the band to play "YMCA," by The Village People at the next football game. He remembered that some school board members did not approve when the school vocal group sang the same song a year prior.

On October 8, 250 middle and high school students marched out of classes to protest the "pro-family" resolution. At the next school board meeting, dozens of Elizabethtown area residents attended the school board meeting, and lined up at microphones to voice their opposition to the "pro-family" resolution. The board referred the resolution to its policy committee for review. The Board was scheduled to reconvene on November 12 to discuss the committee's review. Area parents have organized a group called Common Sense to oppose the resolution.

WISCONSIN

In *Nabozny v. Podlesny,* the U.S.Court of Appeals for the Seventh Circuit ruled that a Wisconsin school district can be sued for failure to protect a student from anti-gay assaults. The decision reversed a lower court's ruling to throw out the case for lack of evidence. A gay man sued his former Wisconsin school because it had failed to protect him from constant, at times brutal, anti-gay assaults and harassment while he was a student. The case, brought by Lambda Legal Defense and Education Fund, was the first to challenge anti-gay violence in the schools. The managing attorney for Lambda's Midwest Regional Office who argued the appeal commented, "This ruling in favor of [Nabozny] is spectacular news for young lesbians and gay men facing violence and harassment in their schools. It means the federal constitution requires schools to offer gay students the same protections and safety given to other students. This may seem obvious, but school officials regularly deny young lesbians and gay men refuge from violence." The plaintiff said, "I hope the thousands of other gay teens forced to live through this kind of terror will be encouraged by my victory and will not give up. I feel like someone has finally recognized that it was the violence that was the problem, not me or my sexual orientation."

Nabozny now awaits trial in the Western District of Wisconsin, scheduled to begin on November 18. The trial will consider whether the school and the school principals (middle school and high school) denied him equal protection under the United States Constitution and will involve both gender and sexual orientation discrimination. The trial court will examine the issue of the school principals who allegedly treated the abuse of Jamie Nabozny differently from abuse of other students. For example, the appeals court observed that the school principal's failure to take action on Jamie's complaint that he was mock-raped in front of classmates and said, "We find it impossible to believe that a female lodging a similar complaint would have received the same response."

∇ Legal contact: Lambda Legal Defense and Education Fund, 17 E. Monroe Street, Ste. 212, Chicago, IL, 60603; (312) 759-8110; Attn. Patricia Logue.

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The information in this report was obtained from national and grassroots organizations, activists, and media, including the following:

∇ *Citizens Against Discrimination. P.O. Box 519, Edneyville, NC 28727; (704) 685-9673; charles6@aol.com.*

- *Gay and Lesbian Alliance Against Defamation (GLAAD), 150 W. 26th Street, Suite 503, New York, NY, 10001; (212) 807-1700; glaad@glaad.org*

- *Gay and Lesbian Alliance Against Defamation/San Francisco Bay Area (GLAAD/SFBA), 1360 Mission Street, Suite 200, San Francisco, CA, 94103; (415) 861-4588; glaadsfba@aol.com*

- *Gay, Lesbian, and Straight Teachers Network (GLSTN), 122 W. 26th Street, Suite 1100, New York, NY, 10001; (212) 727-0135; GLSTN@glstn.org*

- *Human Rights Campaign (HRC), 1101 14th Street, NW, #200, Washington, DC 20005; (202) 628-4160; hrc@hrcusa.org*

- *L.A. Gay and Lesbian Center, 1625 N. Schrader Blvd., Los Angeles, CA, 90028; (213) 860-7358; gaylesbla@aol.com*

- *Lambda Legal Defense and Education Fund, Inc., 666 Broadway, New York, NY 10012-2317;(212) 995-8585*

- *National Advocacy Coalition on Youth and Sexual Orientation (NACYSO), 1711 Connecticut Avenue, NW, Suite 206, Washington, DC, 20009; (202) 319-7596; NACYSO@aol.com*

- *National Gay and Lesbian Task Force (NGLTF), 2320 17th Street, NW, Washington, DC 20009-2702; (202) 332-6483; ngltf@ngltf.org*

- *New Jersey Gay Lesbian Coalition, P.O. Box 11355, New Brunswick, NJ 08906-1335; (908) 828-6772; nglgc@plts.org.*

- *Parents, Families and Friends of Lesbians and Gays (P-FLAG), 1012 14th Street, NW, # 700, Washington, DC 20005; (202) 638-4200; PFLAGNTL@aol.com*

- *PERSON Project (Public Education Regarding Sexual Orientation Nationally)/Jessea Greenman, 586 62nd Street, Oakland, CA 94609-1245; (510) 601-8883; jessea@uclink4.berkeley.edu*

- *Privacy Rights Education Project, P.O. Box 1406, St. Loius, MO 63130; (314) 862-4900; prepsti@aol.com*